**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR**

**TUESDAY, THE 30TH JANUARY 2007 / 10TH MAGHA 1928**

**WP(C).No. 2413 of 2007(K)**

**PETITIONER:**

**M/S.BEST FOODS, KACHERIPADY, ERNAKULAM,**
**REPRESENTED BY ITS MANAGING PARTNESR**
**SRI.A.K. VISWANATHAN.**

**BY ADV. SMT.S.K.DEVI**
**SRI.M.RAJ MOHAN**

**RESPONDENTS:**

1. **SALES TAX OFFICER,**
   **1ST CIRCLE, ERNAKULAM.**

2. **THE COMMISSIONER OF COMMERCIAL TAXES,**
   **THIRUVANANTHAPURAM.**

**BY GOVERNMENT PLEADER SRI.SOJAN JAMES**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

K.BALAKRISHNAN NAIR, J.

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W.P.(C) NO. 2413 OF 2007-K

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JUDGMENT

The petitioner, who is an assessee under the K.G.S.T. Act, impugns Exts.P1 to P3 assessment orders directly before this Court, under Article 226 of the Constitution of India. Normally, the petitioner has to invoke the appellate remedy. The ground advanced for directly approaching this Court is that the orders have been passed in gross violation of the principles of natural justice. The petitioner was not given a fair opportunity to present its case, by producing the books of accounts. Hence this Writ Petition, challenging those orders under Article 226 of the Constitution of India.

2. To justify the invocation of the writ jurisdiction, the learned counsel for the petitioner relied on the decision of the Apex Court in **State of Tripura v. Manoranjan Chakraborty** [(2001) 122 STC 594] and also the decisions of this Court in **M.S.Jewellery v. Assistant Commissioner** [1994 K.L.J. (Tax Cases) 24] and **Malayala Manorama Co. Ltd. v. Assistant Commr.** (2006(4) KLT 235). The petitioner also submits that the appellate remedy may not be efficacious for the reason that it has to pay 0.5% of the tax due as court fee, which will come to a huge amount.

3. The violation of the principles of natural justice, alleged in this case, can be redressed by the appellate forum. The petitioner can produce the books of accounts and other relevant materials in support of its contentions before the appellate authority. This Court can only quash the assessment orders and remit them for fresh disposal in accordance with law. But, as per the amended provisions of the K.G.S.T.Act, the appellate authority will not remand the matter. It can receive additional evidence, consider the matter de novo and pass a fresh order. All the grievances of the petitioner concerning the assessment orders, including that of violation of the principles of natural justice can be effectively redressed by the appellate forum. Therefore, even if a writ will lie, in view of the authorities cited, it is unnecessary for this Court to invoke its jurisdiction under Article 226 of the Constitution of India. Further, the Apex Court in **Union of India v. Hindalco Industries** (2003 A.I.R. S.C.W. 2062) has held as follows:

> "There can be no doubt that in matters of taxation, it is inappropriate for the High Court to interfere in exercise of jurisdiction under Article 226 of the Constitution either at the stage of show cause notice or at the stage of assessment, where alternative remedy by way of filing a reply or appeal, as the case may be, is available..... ."

The above decision also supports the view taken by me.

4. The contention of the petitioner that it will have to pay a court fee

of 0.5% of the tax due, is not a ground to condemn the statutory remedy provided, as not efficacious. It is the scheme of the Act, which cannot be subverted by invoking the power under Article 226.

In the result, the Writ Petition fails and it is dismissed without prejudice to the contentions of the petitioner and its right to invoke the appellate remedy.

30th January, 2007. K.BALAKRISHNAN NAIR, JUDGE.

Nm/